

Remarks / Arguments

Before this amendment, claims 35-52 were pending in this application. Claims 35-52 have been cancelled. With this amendment, claims 53-72 have been added. With this amendment, claims 53-72 are pending.

Claim 53 is directed to a seed-support medium comprising: at least one seed in contact with a hydrophilic cellular substrate contained within a rigid, modular receptacle adapted to fit in an aperture of an aeroponic or hydroponic garden, said receptacle comprising: an upper receptacle portion; and a lower receptacle portion; wherein said upper receptacle portion comprises a lip adapted to support said receptacle in said aperture to said lip and wherein said lower receptacle portion is adapted to fit in said aperture; wherein said medium is storable without germination of said seed. Support for claim 35 can be found, for example, in as-filed claims 1 and 14 and in the specification on page 5, line 22, page 7, line 10, page 9, lines 1-6, page 11, lines 9-10, lines 21-23, and line 26 and on page 11.

Claim 54 is directed to the medium further comprising a substrate in contact with said seed to form a seed-bearing substrate and said seed-bearing substrate is in contact with said hydrophilic cellular substrate, support for which can be found, for example, in as-filed claim 1 and in the specification on page 7, lines 1-20.

Claim 55 is directed to the seed-bearing substrate being a hydrophilic fiber, support for which can be found, for example, in as-filed claim 2. Claim 56 is directed to the seed-bearing substrate being plant starch, support for which can be found, for example, in as-filed claim 3. Claim 56 is directed to the seed-bearing substrate being an adhesive, support for which can be found, for example, in as-filed claim 4. Claim 57 is directed to the seed bearing substrate being an adhesive, support for which can be found, for example, in as-filed claim 5. Claim 59 is directed to the hydrophilic cellular substrate being a synthetic polymer, support for which can be found, for example, in as-filed claim 6. Claim 7 is direct to the hydrophilic cellular substrate being a sponge, support for which can be found, for example, in as-filed claim 7. Claim 61 is directed to the medium also comprising a seal, support for which can be found, for example, in as-filed claim 10. Claim 62 is directed to the seal being opaque, transparent, or translucent, support for which can be found, for example, in as-filed claims 11-13.

Claim 63 is directed to the seal regulating moisture during germination of said seed, support for which can be found, for example, the specification on page 6, lines 12-14. Claim 64 is directed to the hydrophilic cellular substrate being dry, support for which can be found, for example, in the specification on page 7, line 22-23. Claim 65 is directed to the medium being storable without germination of said seed until a desired time when aqueous solution is applied, support for which can be found, for example, in the specification on page 9, lines 16-18. Claim 66 is directed to said receptacle being hydrophilic, support for which can be found, for example, in the specification, on page 11, line 2. Claim 67 is directed to the hydrophilic cellular substrate comprising a horticultural foam, support for which can be found, for example, in the specification, on page 8, lines 12-14.

Claim 68 is directed to the receptacle being porous to aqueous solution and to a root growing from a plant germinated from said seed, support for which can be found, for example, in as-filed claim 1 and in the specification on page 6, lines 4-11. Claim 69 is directed to the hydrophilic cellular substrate comprising urethane pre-polymer reacted with one or more materials selected from the group consisting of: peat, bark and mixtures of peat and bark, support for which can be found, for example, in the specification, on page 8, lines 2-4. Claim 70 is directed to the medium adapted for transporting, supporting, and germinating said seed and for holding a plant germinated from said seed in an aeroponic or hydroponic garden throughout the life of said plant, support for which can be found, for example, in the specification, on page 5, line 3 and lines 22-24. Claim 71 is directed to the medium that is adapted for removal of said medium and said plant germinated from said seed from an aeroponic or hydroponic garden for transplanting, support for which can be found, for example, in the specification, on page 9, lines 5-6.

Claim 72 is directed to a seed-support medium comprising: at least one seed in contact with a dry hydrophilic cellular substrate contained within a porous, cup-shaped, rigid modular receptacle adapted to fit in an aperture of an aeroponic or hydroponic garden, said receptacle comprising: an upper receptacle portion; and a lower receptacle portion; wherein said lower receptacle portion is adapted to fit in said aperture; and wherein said upper receptacle portion comprises a lip adapted to support said receptacle in said aperture to said lip; wherein said receptacle is porous to aqueous solution and to a root growing from a plant germinated from said seed and a seal upon said receptacle wherein said medium is storable without germination of said seed until a desired time when aqueous solution is applied; wherein said medium is

adapted for transporting, supporting, and germinating said seed and for holding a plant germinated from said seed in said aeroponic or hydroponic garden throughout the life of said plant; and wherein said medium is adapted for removal of said medium and a plant germinated from said seed from said aeroponic or hydroponic garden for transplanting. Support for claim 72 can be found, for example, in as-filed claims 1 and 10, and in the specification on page 5, line 22, page 7, lines 10 and 22-23, page 9, lines 1-6, and page 11, lines 9-10, lines 21-23, and line 26.

The amendments to the claims do not add new matter.

Election / Restriction

The Office Action stated that the newly submitted claims are directed to an invention that is independent or distinct from the originally claimed invention that is independent or distinct from the originally claimed invention, and that all remaining claims were withdrawn from consideration because they do not encompass the scope of the originally presented/examined claims. Previously submitted claims 35-52 that were withdrawn have been cancelled.

Newly submitted claims 53-72 are directed to Invention I, seed-support medium, classified in class 47, subclass 59S, hence these claims are directed to the elected invention.

Double Patenting

Previously pending claims were provisionally rejected on the ground of non-statutory obviousness-type double patenting over claims 256-275 of copending Application No. 11/112,269. Solely to expedite prosecution of this application, the Applicant respectfully submits that the previous response included a Terminal Disclaimer, therefore there should not be any double patenting issues with new claims 53-72 and copending Application No. 11/112,269.

Previous Rejections Under 35 U.S.C. § 103(a)

Previously pending claims were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,812,619 to Wood et al. in view of U.S. Patent Pub. No. US

2002/0104263 to Chang. Solely to expedite prosecution of this application, the Applicant respectfully submits that no reasonable combination of Wood and Chang discloses or suggests the invention of new claims 53-72. New independent claim 53 is directed to a seed-support medium comprising: at least one seed upon or in a dry hydrophilic cellular substrate contained within a porous, cup-shaped, rigid modular receptacle adapted to fit in an aperture of an aeroponic or hydroponic garden, said receptacle comprising: an upper receptacle portion; and a lower receptacle portion; wherein said lower receptacle portion is adapted to fit in said aperture; and wherein said upper receptacle portion comprises a lip adapted to support said receptacle in said aperture to said lip; wherein said medium is storable without germination of said seed. Chang, in contrast, is directed to a hanging flower pot containing traditional soil-based growing mediums. Wood is directed to a foam growing medium. However, no combination of these references discloses or suggests a seed support medium for use in an aeroponic or hydroponic garden. Therefore, the Applicant respectfully traverses this rejection to the extent it is applied to new claims 53-72.

Previously pending claims were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,812,619 to Wood et al. in view of U.S. Patent Pub. No. US 2002/0104263 to Chang and further in view of U.S. Patent No. 4,124,953 to Patton. Solely to expedite prosecution of this application, the Applicant respectfully submits that no reasonable combination of Wood, Chang, and Patton discloses or suggests each and every element of new claims 53-72. As demonstrated in the previous paragraph, new claims 53-72 are patentable over any reasonable combination of Wood and Chang. Patton, which is directed to a traditional flower pot containing peat moss as the growing medium, does not remedy the deficiencies of Wood and Chang. Therefore, the Applicant respectfully traverses this rejection to the extent it is applied to new claims 53-72.

Further Arguments

Solely to expedite prosecution of this application, the Applicant submits the following additional arguments in support of new claims 53-72.

Nash et al. (GB2216378) was cited in a previous Office Action. The Applicant respectfully submits that Nash et al. does not teach every element of new claims 53-72. For example, Nash et al. does not disclose or suggest "a rigid, modular receptacle adapted to fit in

an aperture of an aeroponic or hydroponic garden, said receptacle comprising: an upper receptacle portion; and a lower receptacle portion; wherein said lower receptacle portion is adapted to fit in said aperture; and wherein said upper receptacle portion comprises a lip adapted to support said receptacle in said aperture to said lip” as recited by independent claim 53. Rather, Nash is completely devoid of any teaching or suggestion of a seed support medium adapted to fit in an aperture of an aeroponic or hydroponic garden. Obonai et al. (US 6,615,539) was also cited in a previous action in combination with Nash et al. The Applicant respectfully submits that Obonai et al. does not remedy the deficiencies of Nash et al. In particular, Obonai does not disclose or suggest a seed support medium adapted for use with an aeroponic or hydroponic garden.

U.S. Patent No. 3,961,444 to Skaife was cited in a previous Office Action. Skaife does not teach or suggest every element of new claims 53-72. Skaife is directed to a traditional flower pot containing peat moss as the growing medium. Accordingly, Skaife does not disclose or suggest a seed support medium adapted to fit in an aperture of an aeroponic or hydroponic garden. U.S. Patent No. 4,124,953 to Patton was also cited in a previous Office Action. Patton also does not teach or suggest every element of new claims 53-72. Similar to Skaife, Patton is directed to a traditional flower pot containing peat moss as the growing medium. Accordingly, Patton does not disclose or suggest a seed support medium adapted to fit in an aperture of an aeroponic or hydroponic garden.

U.S. Patent No. 4,790,105 to Wareing was also cited in a previous Office Action in combination with one or more references. Wareing does not disclose or suggest a seed support medium adapted to fit in an aperture of an aeroponic or hydroponic garden. Instead, Wareing is directed to a conventional soil-based garden. Therefore, Wareing does not disclose or suggest every element of new claims 53-72, whether considered alone or in combination with the other references of record.

Summary

In summary, none of the prior art of record discloses or suggests every element of new claims 53-72. In addition, no reasonable combination of the cited prior art teaches every element of new claims 53-72. As a result, the invention of new claims 53-72 would not have been obvious to one of ordinary skill in the art at the time the invention was made. Furthermore,

claims 53-72 are directed to an elected invention, and it is believe no additional terminal disclaimer is necessary. This application appears to be in condition for allowance, therefore passage to issuance is respectfully requested.

Conclusion

Before this amendment, this application contained 3 independent claims and 15 dependent claims, and after this amendment, this application contains 2 independent claims and 18 dependent claims, therefore it is believed that no claim fees are due.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Conley', followed by a horizontal line.

Laura L. Conley
Reg. No. 54,653

AeroGrow International, Inc.
6075 Longbow Dr. Suite 200
Boulder, CO 80301
laura@aerogrow.com
Phone (303) 444-7755
Fax (303) 444-0406
LLC: 10/11/07